



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 31381446

Date: JUN. 07, 2024

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Extraordinary Ability)

The Petitioner, a business executive specializing in forensic investigations, fraud prevention and information security, seeks classification as an individual of extraordinary ability. Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Texas Service Center denied the petition. The Director concluded that the Petitioner satisfied the initial evidentiary requirements for this classification but did not establish, as required, that he has sustained national or international acclaim and is among the small percentage at the very top of his field. The matter is now before us on appeal pursuant to 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). While we conduct de novo review on appeal, *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015), we conclude that a remand is warranted in this case because the Director's decision lacks analysis and discussion of the evidence in the record and is insufficient for review. Accordingly, we will withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

Section 203(b)(1)(A) of the Act makes immigrant visas available to noncitizens who: have extraordinary ability in the sciences, arts, education, business or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation; seek to enter the United States to continue work in the area of extraordinary ability; and will substantially benefit the United States upon their entry.

The term "extraordinary ability" refers only to those individuals in "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner may demonstrate international recognition of their achievements in the field through a one-time achievement (that is, a major, internationally recognized award). Absent such an achievement, a petitioner must provide

sufficient qualifying documentation demonstrating that they meet at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i)-(x).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Amin v. Mayorkas*, 24 F.4th 383, 394 (5th Cir. 2022); *Visinscaia v. Beers*, 4 F.Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F.Supp. 2d 1339 (W.D. Wash. 2011).

As the Petitioner has not indicated or established that he has received a major, internationally recognized award, he must demonstrate that he meets the initial evidence requirements by satisfying at least three of the ten criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). The Petitioner claimed that he could meet seven of these ten criteria, and the Director determined that he met three of them. Specifically, the Director concluded that the Petitioner satisfied the criteria related to judging the work of others in the same field, authorship of scholarly articles, and performance in a leading or critical role with organizations that have a distinguished reputation. *See* 8 C.F.R. § 204.5(h)(3)(iv), (vi) and (viii).

The Director determined that the Petitioner claimed, but did not establish, that he meets the criteria related to lesser nationally recognized awards or prizes, membership in associations that require outstanding achievements of their members, original contributions of major significance in his field, and receipt of a high salary or other significantly high remuneration in relation to others in the field. *See* 8 C.F.R. § 204.5(h)(3)(i), (ii), (v) and (ix).

Because the Petitioner demonstrated that he met the initial evidence requirements, the Director proceeded to a final merits determination. In a final merits determination, the Director must analyze all of a petitioner's accomplishments and weigh the totality of the evidence to determine if their successes are sufficient to demonstrate that they have extraordinary ability in the field of endeavor. *See* section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2) and (3); *see also Kazarian*, 596 F.3d at 1119-20.

On appeal, the Petitioner asserts that the Director failed to properly conduct a final merits determination in which they considered all the evidence together in its totality, noting that the Director's final merits analysis fails to address most of the evidence he submitted and should be overturned for that reason.

We agree with the Petitioner's assertion that the Director's final merits analysis is lacking a detailed discussion of the evidence provided in support of the petition. Although the Petitioner submitted evidence related to seven of the ten criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x), the final merits discussion only briefly addresses evidence relating to the three criteria the Director determined that he had satisfied, rather than considering the evidence in its totality. Such evidence included documentation related to the Petitioner's receipt of an award that garnered him some media attention, evidence related to his professional memberships accompanied by letters explaining their significance, evidence of his contributions to the field, evidence related to his prior leading role as the founder of a successful

company, and reference letters that address his standing in his field. Because the Director did not consider any of this evidence in the final merits determination, the decision did not sufficiently address why the Petitioner has not demonstrated his eligibility for the requested classification. Further, in the final merits analysis, officers must consider any potentially relevant evidence in the record, even if such evidence does not relate to or satisfy any of the criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). *See generally*, 6 USCIS Policy Manual F.2(B)(2), <https://www.uscis.gov/policy-manual>.

An officer must fully explain the specific reasons for denying a visa petition. *See* 8 C.F.R. § 103.3(a)(1)(i). In adjudicating a petition filed under section 203(b)(1)(A) of the Act, the officer must articulate the specific reasons why they concluded that the petitioner has not demonstrated by a preponderance of the evidence that the person has extraordinary ability. Here, for the reasons discussed above, the Director's decision did not adequately explain the reasons for denial. As such, the Petitioner was not provided a fair opportunity to contest the decision. *Cf. Matter of M-P-*, 20 I&N Dec. 786 (BIA 1994) (finding that a decision must fully explain the reasons for denying a motion to allow the respondent a meaningful opportunity to challenge the determination on appeal).

Accordingly, we will withdraw the Director's decision and remand the matter for further review and entry of a new decision. As the Director already determined that the Petitioner satisfied at least three criteria, the Director should evaluate whether the Petitioner has demonstrated, by a preponderance of the evidence, his sustained national or international acclaim and whether the record demonstrates that he is one of the small percentage at the very top of the field of endeavor, and that his achievements have been recognized in the field through extensive documentation. *See* section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2), (3); *see also Kazarian*, 596 F.3d at 1119-20. The new decision should include an analysis of the totality of the record, including additional evidence the Petitioner has provided on appeal and the evidence submitted in support of all claimed initial evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x).

ORDER: The Director's decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.